INDEX

PAGE

STATEMENT 2

I—The blacklist has been traditionally utilized to restrain working people from exercising constitutional rights 4

CASES CITED

AFL v. Swing, 312 U. S. 321 12

Amalgamated Utility Workers v. Consolidated Edison, 309 U. S. 261 12

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 12

Atkins v. W. & A. Fletcher Co., 65 N. J. Eq. 658 10

Cantwell v. Connecticut, 310 U. S. 96 11

Carpenters Union v. Citizens Committee, 333 Ill. 225 10

Cornellier v. Haverhill Shoe Mfgrs. Ass'n, 221 Mass. 554 10

Cummings v. State of Missouri, 4 Wall. 277 10

DeJonge v. Oregon, 299 U. S. 353 11

Follett v. Town of McCormick, 321 U. S. 573 11

Grower-Shipper, Vegetable Ass'n of Central Co., 15 NLRB 322 8

Hague v. CIO, 301 U. S. 496 12

Herndon v. Lowry, 301 U. S. 242 11

Hundley v. Louisville Railroad, 105 Ky. 162 10

Joyce v. Great Northern Railway, 100 Minn. 225 10

Martin v. Struthers, 319 U. S. 141 11

National Labor Relations Board v. Waumbec Mills, Inc., 1940, 114 F. 2d 226 5

North American Refractories Co., 52 NLRB 1049 8

NLRB v. Jones & Laughlin, 301 U. S. 1 12

NLRB v. Waumbec Mills, Inc., 114 F. (2d) 226 10

PAGE

Phelps-Dodge v. NLRB, 313 U. S. 177 10

Schneider v. New Jersey, 308 U. S. 147 11
Stewart Die Casting Corp., 14 NLRB 872 8

Thomas v. Collins, 323 U. S. 516 ..... 11, 12
Thornhill v. Alabama, 310 U. S. 88 ..... 11, 12

United States v. Lovett, 328 U. S. 303 11

Willis v. Muscogee Mfg. Co., 120 Ga. 59 10

STATUTES AND AUTHORITIES CITED

American Labor Unions, Florence Peterson, Bureau of Labor Statistics, Department of Labor, 1945, p. 16 7

Boycotts and the Labor Struggle, Harry W. Laidler, 1913, p. 44 6

Industrial Commission Report, Vol. 12, p. 37, April 11, 1899 ..... 8, 9

Labor Problems, Woodrow, pp. 288-289 9

Magazine Industry, Jan. 1, 1921 7

The Bending Cross, Ray Ginger, Rutgers University Press, 1949, p. 182 6

The Dies Committee, a Study of the Special House Committee for the Investigation of Un-American Activities, 1938-1944, August Raymond Ogden, FSC, Catholic University of America Press, 1945 12

The Labor Movement in America, Ely, p. 110 9

The Labor Movement in the United States, Philip S. Foner, p. 101, 1947 5

The Labor Movement in the United States, 1860-1895, Norman J. Ware, 1929, p. 222 6

United States Constitution:
First, Ninth and Tenth Amendments 2, 11
Fourth and Fifth Amendments 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 248

JOHN HOWARD LAWSON

v.

UNITED STATES OF AMERICA

No. 249

DALTON TRUMBO

v.

UNITED STATES OF AMERICA

No. 236

RICHARD MORFORD

v.

UNITED STATES OF AMERICA

No. 197

GEORGE MARSHALL

v.

UNITED STATES OF AMERICA

No. 766

EDWARD K. BORSKY, et al.

v.

UNITED STATES OF AMERICA

MOTION FOR LEAVE TO FILE BRIEF AS AMICII CURIAE AND BRIEF

The undersigned Trade Unions respectfully move for leave to file a brief amicii curiae in support of the petitions for certiorari and the application for rehearing on a petition for certiorari in the matters herein. The written consent of petitioners and respondents to these applications have been filed with the Clerk of this Court.

Statement

The petitioners in the above cases now before this Court for its consideration were convicted of contempt of the House Committee on Un-American Activities. The Trial Court refused to permit the petitioners to show that the purpose and functioning of the House Committee's investigation was to institute a blacklist based upon the exercise of constitutional rights of press, speech and assembly. The existence of such a blacklist designed to restrain the exercise of constitutional rights violates the guarantees of speech, press, assembly and political activity in the Bill of Rights. Conduct on the part of a Congressional committee which so violates the most fundamental guarantees of constitutional democracy transcends the limits which the Constitution places upon the Congressional investigatory power. The activities of a Congressional committee directed towards such unconstitutional ends lying beyond the scope of Congressional power should not be the basis for a proceeding in contempt.

The petitioners in their briefs to this Court have urged that the Committee's utilization of Congressional power to compel disclosure of private political opinion and association is forbidden by the First, Fourth, Fifth, Ninth and Tenth Amendments, and that the Statute creating the Committee is unconstitutional on its face in that it permits congressional invasion into the protected domain of ideas, speech, press and assembly. As trade unions representing the interests of working men and women, we associate ourselves wholeheartedly with these arguments. The

trade union movement depends for its very existence upon the free, untrammelled exercise of the democratic liberties contained within the Bill of Rights.

While the actions of the House Committee on Un-American Activities have caused considerable fear for the preservation of constitutional liberties on the part of Americans in all walks of life, as representatives of working men and women organized into trade unions, we must call the attention of this Court to one aspect of the Committee's functioning which seriously threatens the existence of a free and independent trade union movement.

The records in the cases now before the Court indicate that the House Committee on Un-American Activities has resurrected from the darkest recesses of our history one of the most despised and feared weapons of industrialists bent on destroying the constitutional rights of working people—the blacklist.

The record in one of the cases before this Court—that of John Howard Lawson reveals that one of the most fundamental purposes of this entire phase of the Committee's activity was to create a blacklist of undesirable individuals in their respective industries. Prior to the investigation, a subcommittee of the House Committee went to Los Angeles in the Spring of 1947 and after examining a number of motion picture producers called upon them to discharge and suspend certain writers and directors. The producers had first rejected this demand of the subcommittee. Later in the summer of 1947, the Committee sent certain investigators to Hollywood who urged the producers to "clean out their houses of certain writers * * * else there would be trouble in the industry from the House Committee." (Joint Appendix, Petition of John Howard Lawson, #248, pp. 312-316.)

During the hearings of the House Committee, the Motion Picture Producers Association were urged to establish a blacklist of individuals whose supposed views and affiliations were disapproved by the Committee. Following the close of the hearing, the motion picture industry gave in

to the House Committee's demand for a blacklist and 10 individuals, including two of the petitioners in the cases now before this Court were blacklisted by the industry. Contracts were terminated and further employment in any branch of the industry was denied to all of them. The Committee thereafter claimed the credit for these discharges and the establishment of this blacklist. (Congressional Record, Nov. 24, 1947, at p. 10890.)

I

The blacklist has been traditionally utilized to restrain working people from exercising constitutional rights.

Throughout the entire course of the history of this country, the industrial blacklist has been one of the traditional weapons utilized on every occasion to terrorize working people from exercising their constitutional rights to organize and bargain collectively. Judge McGruder, for the First Circuit Court of Appeals, aptly described the significance of the use of a blacklist:

> "* * * A long experience had shown that one of the most provocative and effective means by which employers sought to impede the organization of workers was the blacklisting of union men, thereby denying them opportunities for employment. See Final Report of the Industrial Commission (Government Printing Office: H. Doc. No. 380, 57th Cong., 1st Sess., 1902), Vol. XIX, pages 892-893, 952; Encyclopedia of the Social Sciences (1935) Vol. II, pages 578-579; Commons and Associates, History of Labour in the United States (1926) Vol. 1, pages 362-363, 420-422; Sub-com. of the Senate Comm. of Education and Labor, Preliminary Report, Sen. Rep. No. 46, 75th Cong., 1st Sess., 1937, page 8, Daugherty, Labor Problems in American Industry (1933) pages 389-390; Patterson, Special Aspects of Industry (2d ed. 1935)

pages 402-403; Cummins, The Labor Problem in the United States (2d ed. 1935) page 351."

National Labor Relations Board v. *Waumbec Mills, Inc.*, 1940, 114 F. 2d 226.

The history of the long struggle of the American working people to exercise their constitutional rights is filled with examples of the use of the blacklist. From the very beginning of the development of industrialism in this country employers resorted to the blacklist to hold their workers in subjugation. In the 1820s the Mill owners in Waltham, Lowell and Lawrence had an effective blacklist system which made it impossible for any worker to obtain employment with the new company without the approval of the former employer.[1]

During the earliest struggle for a shorter work day, the fight in the 1840s to establish a 10-hour day, the employers answered these rudimentary efforts of the workers to improve their working conditions with the institution of wholesale blacklists. Workers who refused to sign contracts with the employers permitting a work day of over 10 hours were threatened that their refusal to sign would result in their being blacklisted in the entire industry.[2]

When the metal trades workers organized their first union during the Civil War years, the Association of Engineers of New York issued a secret directive establishing a blacklist of union workers throughout the industry.[3] When the brewery workers in New York in the 1870s formed a trade union to fight for a 10-hour day and a wage of 50¢ an hour, their organizing activities were smashed through the institution of an industry-blacklist. The members of the union were barred from employment and many of the

[1] See, *The Labor Movement in the United States*, Philip S. Foner, p. 101, 1947.

[2] Foner, cited supra, p. 211.

[3] Foner, cited supra, p. 353.

leaders had to leave their home communities.[4] When the iron and metal workers in up-state New York in the 1880s organized to fight a wage cut of 20%, the companies involved retaliated with an industry blacklist.[5]

One of the first major attempts of railroad workers to organize into a national union to defend themselves against the powerful railway industrialists was destroyed by the institution of a national blacklist. The blacklist which smashed the American Railway Union in the 1880s has never been forgotten by the organized trade union movement. For years after the defeat of the famous Pullman strike, railway men who had joined the American Railway Union were denied employment throughout the entire country.[6]

The steel trust met the earliest efforts of steel workers to organize together for their mutual protection with the weapon of the industrial blacklist. The City Editor of the *Pittsburgh Leader* testified in 1912 before the Stanley Investigation Committee that he had in his possession a list of 3,000 former employees of the Carnegie Steel Company who were blacklisted for union activity from obtaining work in the steel mills.[7] Similarly, the National Metal Trades Association faced with the first efforts by workers in this industry to utilize their constitutional rights to organize, set up a widespread system of industrial blacklist through a spurious employment bureau with branches in many large cities.[8]

It is no coincidence that after the first World War during the surge of union-smashing activities engaged in under the name of the "American Plan", the industrial blacklist

---

[4] *The Labor Movement in the United States,* 1860-1895, Norman J. Ware, 1929, p. 222.

[5] Ware, cited supra, p. 340.

[6] *The Bending Cross,* Ray Ginger, Rutgers University Press, 1949, p. 182.

[7] *Boycotts and the Labor Struggle,* Harry W. Laidler, 1913, p. 44.

[8] Laidler, cited supra, p. 47.

was a principal weapon of employers bent on destroying the constitutional rights of working people. Under this so-called "Plan" open shop associations composed of Manufacturers' groups, Boards of Trade, Chambers of Commerce, Bankers' associations and many others joined together to maintain blacklists of union men and women.[9] The American Bankers Association in their magazine *Industry* stated openly that the purpose of this "Plan" was to save the workers from "the shackles of organization to their own detriment".[10]

In the years directly following the economic crisis in 1929, employers constantly resorted to the blacklist in a feverish attempt to stem the tide of union organization encouraged by the harsh necessities of the times. Out of the countless stories contained in the records and proceedings before the National Labor Relations Board in the early years of the Wagner Act, of the use of the blacklist to terrorize workers from exercising their legal and constitutional rights to self-organization the experience of the employees of the Fruehauf Trailer Company is a vivid example. A member of the National Labor Relations Board stated to a Congressional Investigating Committee:

> "I have never listened to anything more tragically un-American than stories of the discharged employees of the Fruehauf Trailer Co., victims of a labor spy. Man after man in the prime of life, of obvious character and courage, came before us to tell of the blows that had fallen on him for his crime of having joined a union. Here they were—family men with wives and children—on public relief, blacklisted from employment, so they claimed, in the City of Detroit, citizens whose only offense was that they had ventured in the land of the free to organize as employees to improve their working conditions. Their reward, as workers

---

[9] *American Labor Unions*, Florence Peterson, Bureau of Labor Statistics, Department of Labor, 1945, p. 16.

[10] From a statement of policy of the American Bankers Association in the magazine *Industry*, Jan. 1, 1921, cited in Peterson, at p. 16.

who had given their best to their employer, was to be hunted down by a hired spy like the lowest of criminals and thereafter tossed like useless metal on the scrap heap." [11]

The early years in the struggle to establish and maintain a union among the mine workers are filled with the terror of the industry-wide blacklist. Mr. John Mitchell, one of the first officers of the United Mine Workers, testified as follows before the Industrial Commission in hearings held in 1899:

> "The blacklist has been one of the worst weapons organized labor has had to contend against. For instance, if a miner was discharged by a coal company for insisting upon better conditions, or trying to induce his fellow workmen to join his labor organization, he found it impossible to find employment in the State where he then resided. It has always been difficult for our organization to secure proof that this method has been resorted to by employers. It is a well-known fact, however, that in the State of West Virginia, if a man dares to assert the rights guaranteed, he is deprived of the opportunity to earn a living for himself and family by his employment, and many times is unable to secure employment at any other mine in the State." [12]

Before the same Commission, the President of the Colorado Federation of Labor, testified from his own experience as to the utilization of the blacklist:

> "I know from my own experience that men are kept from positions in all parts of the State of Colorado because of their connection with organized labor. • • • They (the employing class) practically have the power

[11] Preliminary Hearings before the LaFollette Committee, p. 291. Compare also cases before the National Labor Relations Board holding blacklisting to be discrimination, violation of the NLRA:

Stewart Die Casting Corp., 14 NLRB 872;

Grower-Shipper Vegetable Ass'n of Central Col., 15 NLRB 322;

North American Refractories Co., 52 NLRB 1049.

[12] *Industrial Commission Report*, Vol. 12, p. 37, April 11, 1899.

> to say that a man shall not have work; to destroy his credit with the merchants; to destroy or make valueless what little property he has; to separate him from his family and make him a wanderer upon the face of the earth." [13]

The functioning of a blacklist is simple and forthright in its ruthlessness. It deprives a man of the opportunity to earn a living to support himself and his family. It conditions the exercise of the constitutional rights upon starvation. It holds hostage a man's wife and children. It is a most pitiless weapon in the arsenal of reaction. An observer of the American labor scene at the turn of this century described its effectiveness in these terms:

> "Blacklisting has the merit of being very effective. Its edict is final; it troubles no jury; sends for no sheriff; its machinery is purely clerical, with the magnificent advantage of being operative wherever its agencies exist. It has its watchdog by every door, and woe to the man who, with its brand on his brow, seeks work and bread in any one of its departments." [14]

Another student of American labor history wrote:

> "A man who for any reason, be it even whim, caprice, or personal spite, falls into disfavor with his employer is placed on the blacklist, and his name, at times accompanied by a personal description, is sent to the allied employers all over the country. * * * The blacklist will pursue a man for years, will drive him out of an honest trade * * * and will follow him across the continent, and everywhere defeat his efforts to gain a livelihood." [15]

Wherever the technique of the blacklist has come before the courts it has been rejected as a device destructive of

---

[13] *Industrial Commission Report*, Vol. 12, p. 248.

[14] Woodrow, *Labor Problems*, pp. 288-289.

[15] Ely, *The Labor Movement in America*, p. 110.

human rights and violative of constitutional protections.[16] The courts have frequently lent their power to restrain the existence of such blacklists.[17] Many states have outlawed the blacklist by statute.[18]

The resurrection of the blacklist in any form has always met with the unanimous disapproval of every section of the American people. The unashamed elevation to the Congressional level of this infamous technique for destroying constitutional rights represents an open challenge to the entire fabric of constitutional democracy.

It is little wonder that working people organized into trade unions regard with considerable dismay the open attempt by a committee of Congress to reestablish the long repudiated technique of the blacklist.

Neither Congress nor any agency of the executive arm of the government may condition or proscribe the exercise

---

[16] A congressional blacklist designed to exclude certain individuals from government employment was stricken down by this Court in *U. S.* v. *Lovett,* 328 U. S. 303; see also *Cummings* v. *State of Missouri,* 4 Wall. 277. Similarly, blacklists in private industry have been repudiated by this Court. See, for example, *Phelps-Dodge* v. *NLRB,* 313 U. S. 177; *NLRB* v. *Wambec Mills, Inc.,* 1114 F. (2d) 226. Examples of State Court decisions are *Cornellier* v. *Haverhill Shoe Mfgrs. Ass'n,* 221 Mass. 554; *Hundley* v. *Louisville Railroad,* 105 Ky. 162; *Joyce* v. *Great Northern Railway,* 100 Minn. 225; *Atkins* v. *W. & A. Fletcher Co.,* 65 N. J. Eq. 658; *Willis* v. *Muscogee Mfg. Co.,* 120 Ga. 59.

[17] See, for example, *Carpenters Union* v. *Citizens Committee,* 333 Ill. 225. In that case the Court enjoined a committee of citizens without direct interest in the industry which attempted to coerce employers not to employ union members by threatening them with loss of business and unfavorable publicity.

[18] Ala. Code 1928, S3451; Ark. Pope's Digest 1937, S9121; Calif.; Labor Code 1937, S1050, 1051; Fla. Fen. Laws 1927, S6606, 7773; Ill. Smith-Hurd Ann. Stat., c. 38 S139; Iowa Code 1935, S13253; Minn. Mason's Stat. 1927, S10378; Mo. Revised Stat. 1929, S4255; N. Y. Penal Law S580; Wash. Rem. Rev. Stat. S2382 (5); Wis. Stat. S343, 682.

of the rights of speech, press or assembly.[19] The institution of a blacklist to restrain the exercise of constitutional rights, whether it be the fundamental right of self-organization or the exercise of the rights of speech, press and assembly, or the exercise of the political rights embodied in the First, Ninth and Tenth Amendments, is in itself conduct violative of the Constitution.

When Congress following the urging of the House Committee on Un-American Activities sought to establish a blacklist of certain individuals from obtaining employment in the Federal government, this Court struck down this device as a bill of attainder, violative of the Constitution. In response to the theory of some that such a Congressional blacklist lay beyond the reach of this Court, Mr. Justice Black replied:

> "Were this case to be not justifiable, congressional action aimed at three named individuals which stigmatize their reputation and seriously impaired their chance to earn a living, could never be challenged in any court. Our constitution did not contemplate such a result."

When a committee of the Congress, equally bound by the mandates of the Constitution, engaged in such unconstitutional conduct, it is likewise essential that this Court correct this abuse of Congressional power.

This attempt of the House Committee on Un-American Activities to set up a widespread system of blacklisting fundamentally threatens the constitutional rights of working people. The House Committee has on many occasions attempted to interfere with the legitimate activities of

---

[19] *United States* v. *Lovett*, 328 U. S. 303; *Thomas* v. *Collins*, 323 U. S. 516; *Follett* v. *Town of McCormick*, 321 U. S. 573; *Martin* v. *Struthers*, 319 U. S. 141; *Cantwell* v. *Connecticut*, 310 U. S. 96; *Thornhill* v. *Alabama*, 310 U. S. 88; *Schneider* v. *New Jersey*, 308 U. S. 147; *Herndon* v. *Lowry*, 301 U. S. 242; *DeJonge* v. *Oregon*, 299 U. S. 353.

trade unions.[20] This Court has long held that the right of workers to organize and bargain collectively is a fundamental right protected by the Constitution. *Amalgamated Utility Workers* v. *Consolidated Edison,* 309 U. S. 261; *NLRB* v. *Jones & Laughlin,* 301 U. S. 1; *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184. The organization of workers into trade unions involves the utilization of the rights of speech, press and assembly guaranteed by the First Amendment. *Thomas* v. *Collins,* 323, 516; *Thornhill* v. *Alabama,* 310 U. S. 88; *AFL* v. *Swing,* 312 U. S. 321; *Hague* v. *CIO,* 301 U. S. 496. In short, the existence of the trade unions have been recognized by this Court as the primary means through which working people utilize the First Amendment as a charter of political democracy. *Thomas* v. *Collins,* 323 U. S. 516; *Thornhill* v. *Alabama,* 310 U. S. 88.

Any attempt to restrict or suppress this fnudamental right of working people to organize and bargain collectively violates the Constitution. *Thomas* v. *Collins,* 323 U. S. 516; *Thornhill* v. *Alabama,* 310 U. S. 88. The institution of a blacklist is one of the most severe restraints upon the exercise of the constitutional right of self-organization. There can be no more serious deterrent to the utilization of constitutional rights than the deprivation of the right of a working man to earn a living.

The very existence of constitutional liberties insofar as they relate to the rights of working people depend upon the repudiation by this Court of the institution of the blacklist in any form whatsoever. For this reason the

---

[20] See, for example, *The Dies Committee, a Study of the Special House Committee for the Investigation of Un-American Activities,* 1938-1944, August Raymond Ogden, FSC, Catholic University of America Press, 1945; Ogden's exhaustive study of the functioning of the House Committee on Un-American Activities reveals that the House Committee actively intervened on the side of employers in almost every major industrial dispute during the period of its existence. See, *The Dies Committee,* cited supra, pp. 53, 55, 75, 183, 239, 243.

undersigned trade unions, as associations of working men and women, urge this Court to grant the petitions herein.

Respectfully submitted,

AMERICAN COMMUNICATIONS ASSOCIATION, CIO,
VICTOR RABINOWITZ, *General Counsel,*
76 Beaver Street,
New York 5, N. Y.

FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS OF AMERICA, CIO,
NATHAN WITT, *General Counsel,*
9 East 40th Street,
New York, N. Y.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, CIO,
NATHAN WITT, *General Counsel,*
9 East 40th Street,
New York, N. Y.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, CIO,
NATHAN WITT, *General Counsel,*
9 East 40th Street,
New York, N. Y.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, CIO,
DAVID SCRIBNER, *General Counsel,*
11 East 51st Street,
New York 22, N. Y.

UNITED FURNITURE WORKERS OF AMERICA, CIO,
WEINSTOCK & TAUBER, *General Counsel,*
150 Nassau Street,
New York, N. Y.

UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, CIO,
LEONARD B. BOUDIN, *General Counsel,*
76 Beaver Street,
New York 5, N. Y.

UNITED PUBLIC WORKERS OF AMERICA, CIO,
NATHAN WITT, *General Counsel,*
9 East 40th Street,
New York, N. Y.